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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1951

No. 153

HOPE BASKET COMPANY, a corporation, WALTER VERHALEN, R. A. DENNISON, and WALTER VERHALEN II, doing business as WALTER VERHALEN COMPANY, a partnership, *Petitioners,*

v.

PRODUCT ADVANCEMENT CORPORATION and ST. JOE MACHINES, INC., *Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND SUPPORTING BRIEF.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PRODUCT ADVANCEMENT CORPORATION and ST. JOE MACHINES, INC., *Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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*To The Honorable The Chief Justice and The Associate Justices Of The Supreme Court Of The United States:*

Your Petitioners, Hope Basket Company, a corporation, Walter Verhalen, R. A. Dennison, and Walter Verhalen II, doing business as Walter Verhalen Company, a partnership, respectfully pray for a Writ of Certiorari to the United States Court of Appeals For The Sixth Circuit to review a judgment of that Court entered on March 29, 1951.

A certified transcript of the record, including the proceedings in said Court of Appeals, is furnished herewith, in compliance with Rule 38 of the Rules of this Court.

**Summary Statement of the Matter Involved.**

The present action was brought by petitioners against the respondents for a Declaratory Judgment to determine petitioners' rights as licensees under five royalty license agreements executed April 1, 1930 (R. 4, 12-13); to have Schmidtke Basket Patent No. 1,895,586 declared invalid for attempted undue extension of patent monopoly (R. 10, 13); and to secure the return of money inadvertently paid as royalty under said license agreements since April 1, 1947 (R. 9, 13), which was the date of expiration of Schmidtke Method and Apparatus for Making Baskets Patent No. 1,752,856.

Petitioners are manufacturers and sellers of the common continuous stave wood veneer bushel baskets and respondents are the licensing agent and owner of patents pertaining to such baskets and their manufacture.

This action is in the nature of a test case (R. 221) as respondent, Product Advancement Corporation, claims some 50 licensees (R. 277, 278) who have been operating under licenses identical with or similar to petitioners', and some of those other licensees have assisted financially in the cost of this litigation in order to obtain a determination of rights under such license agreements. (R. 221)

Petitioners paid substantial royalties to respondents for the full 17 years of the life of respondents' Method and Apparatus patent No. 1,752,856 from the date of its grant on April 1, 1930, to the date of its expiration on April 1, 1947 (R. 223); but petitioners contend they had no obligation to pay royalty thereafter under respondents' Basket Patent No. 1,895,586 which did not expire until January 31, 1950; that respondents' attempt to enforce this second patent against petitioners and the other licensees is unlawful as an undue extension of patent monopoly; that respon-

dents had a monopoly for the full 17 years of the life of the original patent No. 1,752,856 but could not extend that monopoly for additional years through the use of patent No. 1,895,586 which latter patent was issued as a division of patent No. 1,752,856.

Both courts below (R. 213, 292) held that the Basket Patent No. 1,895,586 extended the duration of the license agreements beyond April 1, 1947, the date of the expiration of the Basket Making Method and Apparatus Patent No. 1,752,856; they held (R. 216, 293) that the Basket Patent was valid; and they held (R. 221, 298) that royalties paid by petitioners since April 1, 1947, could not be recovered.

In view of the decisions of the Courts below, petitioners were in the position of having apparatus and using methods for making baskets which they had used for the full 17 years of the life of patent No. 1,752,856 for the sole purpose of making baskets covered by patent No. 1,895,586, but which they were not free to use after the expiration of patent No. 1,752,856 on April 1, 1947, unless they then paid royalty under patent No. 1,895,586.

Patent No. 1,752,856 (R. 244) shows in Fig. 1 the identical basket of patent No. 1,895,586 (R. 252A). The inventor is the same in both patents and the latter issued on a divisional application, divided from the application for the first patent.

Patent No. 1,752,856 shows in Fig. 3 the entire machine which has no other purpose or use than the manufacture of the baskets of the Basket Patent. Figs. 5, 6 and 7 show so-called attachments which are part of the machine and have no use other than the manufacture of the baskets of the Basket Patent.

In patent No. 1,752,856 (R. 244) in the first page of his specification, in column 1, the patentee states:

> "My invention has reference to a *basket* which is formed from a mat having a radial series of panels which are bent at an abrupt angle to the center portion of the mat to form an annular wall, and my invention also has reference to the method and apparatus for making baskets of this character." (Emphasis added.)

The patentee also states in column 1 and column 2:

> "The principal objects of my invention are * * * to avoid the rounded bend at the bottom which has been present in *baskets* of the character heretofore formed from a mat similar to that used in the manufacture of my present *basket;* to form the bottom and annular walls from a mat which is bent abruptly at the juncture of the annular side wall and the bottom; * * * to arch the bottom of the *basket* to afford strength and rigidity; to hold the *basket* bottom rigidly in place by a confining band; to confine the lower end of the *basket* and the *basket* bottom by means of an annular band while the bottom is arched or pressed inwardly so as to permanently retain the *basket* bottom substantially in the pressed in position; * * *". (Emphasis added.)

As to Fig. 1 of patent No. 1,752,856, the inventor says:

> "Fig. 1 is a side view of a *basket* made in accordance with my invention, portions thereof being broken away to disclose details of the construction; * * * Fig. 3 a side view of a machine for making *baskets in accordance with my present invention;*" (Emphasis added.)

It is not believed necessary at this time to explain the apparatus and method described in detail in patent No. 1,752,856 but suffice it to say that the specification describes both the method and apparatus and also the only basket which is intended to be made by the invention. That basket, of course, is the same basket described and claimed in patent No. 1,895,586 which issued about 3 years later.

In patent No. 1,752,856, claim 3 is representative of the machine or apparatus claims and is as follows:

> "3. In a machine for making frusto-conical *baskets* with an arched bottom, the combination of a work holder having means for arching the *basket* bottom and holding the marginal edge of the latter at an abrupt angle to the adjoining edge of the *basket* side wall, and a hoop applying device for applying a hoop on the smaller end of the *basket* over the juncture of said abrupt angled portions of the bottom and side wall." (Emphasis added.)

Claim 15 is representative of the method claims and is as follows:

> "The method of reinforcing a *basket* bottom of crossed diametrically arranged panels having integral extensions at the ends forming the *basket* side walls, which consists in arching the *basket* bottom and securing upturned portions of said extensions along the periphery of the arched bottom within a *basket*-bottom embracing-hoop to maintain the bottom in its bulged condition and under tension." (Emphasis added.)

With respect to the Basket Patent No. 1,895,586 (R. 252A), the drawing, of course, shows the same basket and Fig. 1 thereof is identical, except as to numerals, with Fig. 1 of the earlier patent. In this later basket patent, the objects of the invention are stated to be the same as the objects in the earlier patent, and claim 2 is as follows:

> "2. A container formed out of a plurality of veneer strips each comprising a bottom member and an integral pair of staves, each stave being bent up angularly to the bottom member, all of the bottom members crossing each other, and a plurality of spaced hoops secured to the outer sides of the staves one of said hoops being located adjacent the ends of the bottom members, said bottom members being bowed inwardly of the container and held from straightening out by the latter hoop."

The District Court below held:

> "The claims of the machine patent are not co-extensive with the claims of the basket patent and do not teach or disclose all that is found in the latter patent. In other words, the basket patent represents a distinct, different, and separable invention from that of the prior machine patent." (R. 217)

The Court of Appeals held to the same effect.

The District Court held:

> "* * * that under the claims of the machine patent, the attachments referred to in the attachment licenses

could be utilized to make a basket different from that claimed in the basket patent." (R. 217)

The Court of Appeals held:

"Different baskets from those specified in the basket patent can be made on the Schmidtke machine patent herein involved." (R. 294) and also;

"The baskets can be made by hand or by other methods without infringing the machine patent. There are other patented basket machines available. Dudley Patent No. 1,751,728; Craig Patent No. 1,757,294." (R. 294)

In regard to the foregoing quotations, it is evident from an examination of the two patents in question that they are co-extensive to the extent that the machine of the machine patent is intended for the sole purpose of making the basket which is fully described therein, that is the basket of the basket patent. There is no other use or purpose for that patented machine.

The patented machine attachments could not be utilized to make a different basket. If the licensed attachments which made the machine patent patentable were discarded, the basic machine supplemented by other non-patented attachments could be used to make a non-patented basket. Such change would mean that the licensed machine and attachment of the expired machine patent was not being used.

There was no proof that the baskets could be made by hand, but the real question is not some possible non-commercial way of making a basket but the right of continuance of the use of the commercial machine on which petitioners had paid royalty for the full 17 year life of the licensed patent, and on which the patent had expired.

The Dudley and Craig patents referred to by the court were subordinate to the Schmidtke Method and Apparatus patent, as the latter patent was awarded priority over them in a Patent Office interference proceeding. (R. 191)

The unitary concept of the invention involved in both patents was in effect conceded by respondents' counsel in his opening statement at the trial of this cause when he stated as follows (R. 125, 126):

> "Your Honor, there is one phase of the invention before this court, and that is the manufacture of baskets. I believe your Honor has been told that the round-bottom basket has a so-called allegedly round bottom, it has straight sides, and so on, but it is a very simple matter to make a through-stave round bottom basket. This basket must be held in position while the hoops are being put on, and, of course, if I have something holding that basket around its bottom, to put on the upper hoop and the middle hoop—that is a very simple thing, but if there is an element over the bottom of that basket, how am I going to apply a bottom hoop? So the invention had to consist in some means of holding that basket, causing that basket to rotate for the stitching of the bottom hoop thereon, which was some thing that has never been done before. Now the question is, does the hen come before the egg? Was the basket invented before the machine, or was the machine the result of the basket?"
>
> "In any event there had to be some thing, some way, some means of getting the holder at the bottom of the basket so that a hoop could be stitched on the bottom.
>
> "Now they have, of course, the so-called stitched in bottom, whereby the basket itself had no bottom at all, they made a separate bottom, after the basket side wall was formed, and they stitched that in on a stitching machine. They made another basket in which they made the outside walls and then later they put a board in the bottom, and then stitched it. But this is the first time—it was the Schmidtke invention that made it possible to apply a bottom hoop, to apply it successively in quantities, by machinery."

The respondents claimed at the time of the trial of this case in June of 1949 that they had some 50 basket making factories as licensees (Defendant's Exhibit D 23, R. 277, 278), and the net result of the decision below is that not

only the petitioners here, but also the other 49 licensees listed, are required to pay royalty for the continued use of licensed patented machinery on which the patent expired April 1, 1947.

**Jurisdiction.**

1. This is a suit arising under the Declaratory Judgment Act, Section 274(d) of the Judicial Code (28 U.S.C. Sec. 400) and under the Patent Laws of the United States, Sec. 24(7) of the Judicial Code (28 U.S.C. Sec. 41(7)).

2. The jurisdiction of this Court is involved under Sec. 240(a) of the Judicial Code, as amended (28 U.S.C. 347) and Rule 38(5)(b) of the rules of this Court.

3. The date of the judgment which petitioner seeks to have reviewed is March 29, 1951. There was no petition for rehearing.

**Questions Presented.**

1. Are licensees under an expired patent covering apparatus and methods, and who had paid royalty for the full 17 year life of the patent, entitled without the payment of additional royalty to the continued use of such apparatus and methods after the expiration of such patent?

2. Is a patent on a basket which is the sole product of apparatus and methods covered by an expired patent, invalid for undue extension of patent monopoly?

**Reasons Relied Upon for the Allowance of the Writ.**

1. Respondents here conduct a patent licensing operation covering approximately 50 licensees in some 18 different states of the United States and apparently are requiring from many licensees, besides petitioners, royalty under claimed patent right for the continued use of machinery and methods on which the patent monopoly has expired, which presents a matter of considerable public interest.

*Marconi Wireless Tel. Co.* v. *United States,* 320 U. S. 1; *Scott Paper Co.* v. *Marcalus Mfg. Co.,* 326 U. S. 249; *Mercoid Corp.* v. *Mid-Continent Investment Co.,* 320 U. S. 661.

2. Respondents reside within the Sixth Circuit, and within the District and Division where the instant case was tried; and no further declaratory judgment action may be brought by another licensee to obtain a court decision which may be in conflict with that herein made. This Court has granted certiorari under similar circumstances where litigation in other Circuits was improbable. *Schriber-Schroth Co.* v. *Cleveland Trust Co.,* 305 U. S. 47; *Muncie Gear Works* v. *Outboard Marine & Mfg. Co.,* 315 U. S. 759.

3. The Court of Appeals in this case, by holding the Basket Patent and respondents' use of that patent is not an undue extension of patent monopoly, has decided an important question of patent law and public policy in a way which conflicts with many decisions of this Court holding that a patent monopoly on an invention is valid for 17 years, and that thereafter everyone is entitled to the unrestricted right of use of such invention. *Saranac Automatic Mach. Corp.* v. *The Wirebounds Patents Co.,* 282 U. S. 704; *Miller* v. *Eagle Mfg. Co.,* 151 U. S. 186.

In view of the importance to the public of preventing undue extension of the patent monopoly, this Court has granted certiorari in many recent cases to correct misapplication of important points of patent law despite the lack of conflict of decisions as to the particular patent involved. *Schriber-Schroth Co.* v. *Cleveland Trust Co.,* 311 U. S. 211; *Morton Salt Co.* v. *G. S. Suppiger Co.,* 314 U. S. 488; *Sola Electric Co.* v. *Jefferson Electric Co.,* 317 U. S. 173.

**Prayer.**

WHEREFORE your petitioners respectfully pray that a writ of certiorari be issued to the United States Court of Appeals for the Sixth Circuit with respect to Appeal No. 11241 to the end that this cause may be reviewed and deter-

mined by this Court and that petitioners be granted such relief as may be just.

Respectfully submitted,

HERBERT H. PORTER,
EDWIN T. BEAN,
*Counsel for Petitioners.*

HAROLD W. BRYANT,
*Of Counsel.*

## BRIEF IN SUPPORT OF PETITION.

### Opinions of the Courts Below.

The opinion of the District Court of the United States for the Western District of Michigan, Southern Division, was filed February 17, 1950 (R. 198) and is reported at 89 F. Supp. 116.

The opinion of the United States Court of Appeals for the Sixth Circuit was filed March 29, 1951 (R. 288) and is reported at 187 F. (2d) 1008.

### Jurisdiction.

The jurisdictional statement appears in the accompanying petition.

### Statement of the Case.

The essential facts are stated in the accompanying petition.

### Specification of Errors.

The errors which petitioner will urge if the writ of certiorari is issued are that the United States Court of Appeals for the Sixth Circuit erred:

1. In failing to hold that patent No. 1,895,586 is invalid as an undue extension of patent monopoly over the earlier issued patent No. 1,752,856.

2. In failing to hold that a licensee under an expired patent covering apparatus and methods, and who has paid royalty for the full 17 year life of the patent, is thereafter entitled without the payment of additional royalty to continue the use of the apparatus and methods for their intended purposes.

3. In failing to order the return of royalties inadvertently paid for a period after the expiration of the apparatus and method patent.

## ARGUMENT.

### The Large Public Interest Involved.

Respondents here have for many years been conducting a patent licensing operation pertaining to the manufacture and sale of so-called straight side continuous stave bushel baskets. They claim approximately 50 licensees in some 18 different states of the United States. Petitioners are among the largest of the licensed manufacturers. The expense of this litigation has been such that certain licensees provided financial assistance to petitioners in order to test the patent monopoly which they believed expired with the expiration of the Schmidtke Apparatus and Method patent No. 1,752,856 on April 1, 1947.

Any declaratory judgment action by another licensee would be in the Sixth Circuit, where the instant case has been tried; and the District Court would be bound by the decision from which this petition is being taken. Thus, the practical effect of the decision of the Appellate Court has been to decide the rights of some 50 licensees.

The misuse of the patent laws and unlawful extension of patent monopoly in this case is so flagrant and affects such a large number of licensees, and therewith the public generally, that this Court should review the decision below as it has done in other cases of unusual public importance. *Marconi Wireless Tel. Co.* v. *United States*, 320 U. S. 1; *Mercoid Corp.* v. *Mid-Continent Investment Co.*, 320 U. S. 661; *Scott Paper Co.* v. *Marcalus Mfg. Co.*, 326 U. S. 249.

### Undue Extension of Patent Monopoly.

The two patents involved are the Schmidtke patents 1,752,856 and 1,895,586. Both patents are based upon one application which was filed on March 25, 1926. In the prosecution of that original application, one patent examiner held that there was divisional subject matter in the application and the inventor, without taking an appeal from such decision, as he had a right to do, divided his applica-

tion and on February 20, 1928, filed the specific application which issued as patent No. 1,895,586 on January 31, 1933.

We have the situation then that the inventor in 1926 by filing only one application took and stated the position that he had only one invention on which he would be entitled to only one 17 year period of monopoly. Thereafter, instead of making certain that both patents issued on the same date so that he would still have only the one 17 year period of patent monopoly, he secured the issuance of patent No. 1,752,856 on April 1, 1930, on the apparatus and method for making the basket, and the issuance on January 31, 1933, of patent No. 1,895,586, on the basket per se. Since the expiration of the apparatus and method patent, the basket patent has been used by respondents in an attempt to extend the effective patent monopoly.

The Court of Appeals apparently felt that because one patent examiner required the filing of the divisional application, such action gave legality to the basket patent even though that patent was not issued on the same day as the apparatus and method patent. The Court stated (R. 294):

> "* * * In the present case, the Patent Office required divisional applications for the machine and basket patents."

On that direct question, the Court of Appeals for the Fourth Circuit had previously held in *Remington Rand Business Service Inc.* v. *Acme Card System Co.*, 71 F. (2d) 628, that a patentee is not obliged to accept the ruling of the Patent Office on division, and may not lengthen the term of his monopoly by any resulting improper division of his original application.

At the start of the trial of this case, counsel for the respondents stated in part (R. 125):

> "So the invention had to consist in some means of holding that basket, causing that basket to rotate for the stitching of the bottom hoop thereon, which was something that has never been done before. Now the question, does the hen come before the egg? Was the

basket invented before the machine, or was the machine the result of the basket."

Respondents' counsel at that time not only argued that this was a unitary development, but that the important thing was the means or method that could be used to make the basket. The Court of Appeals below held however (R. 294):

> "* * * that the basket patent represents a distinct and separable invention from that of the prior machine patent and accordingly does not violate the rule against double patenting."

In so holding, the Court of Appeals relied upon several cases, including the case of *Wirebounds Patent Co.* v. *Saranac Automatic Machine Corp.*, 37 F. (2d) 830, C.C.A. 6, but the Court *did not refer to the decision of this Court in that same case, Saranac Automatic Machine Corp.* v. *Wirebounds Patent Co.*, 282 U. S. 704, wherein this Court stated in considering claim 25 of the machine patent there involved as follows:

> "The new method had a large and immediate commercial success, and we assume . . . that it involved invention."
>
> "This conception is that of the reissue (product) patent . . . As it has now expired, the public is free to use the new procedure of making wirebound folding box blanks, so far as taught by that patent . . ."
>
> "The drawings of the (expired product) patent, which show a completed blank ready for folding, read with the specifications, indicate unmistakably that the advance, achieved by the improvement over the existing method of manufacturing box blanks, was in the process, by which the product of the patent could be made . . ."
>
> "Thus this (expired product) patent completely discloses the invention . . . It taught all that was disclosed by their method patent, for the method claimed is but the process of the now expired reissue patent resulting in the product of the patent . . ."

"The question, therefore, is not one of reliance upon the prior art of the reissue patent as against a copending patent, or of double patenting, or of the overlapping of specific and generic patents. It is the attempted extension of the monopoly of the expired reissue patent in Inwood and Lavenberg's invention by resort to the machine patent, and to the work holder from which the described invention had been subtracted by division, and which cover not the invention of the reissue patent but a mechanical device which does not involve invention." (Parenthetic statements added.)

In that case the patents had issued in the reverse order to the present one, that is, the product patent had issued and expired first and this Court held that the expired product patent completely disclosed the invention, that it taught all that was disclosed by the later method patent.

A new suit was thereafter brought, in which the method patent was held invalid: and on appeal to the Sixth Circuit Court, such decision was affirmed (1933: *Wirebounds Patent Co.* v. *Saranac Automatic Machine Corp.*, 65 F. (2d) 904), with the statements:

(Page 905) "The Supreme Court did not in terms hold that the method patent was invalid. It did state that the reissue patent taught all that was disclosed by the method patent . . . and that by resort to these later patents the appellant had attempted to extend the monopoly of the expired reissue . . ."

(Page 906) "(3) There is a further principle, perhaps announced by the Supreme Court for the first time in its decision of this case in 282 U. S. 704, 51 S. Ct. 232, 75 L. Ed. 634, or at least clearly deducible from that opinion, which in our opinion must control the present case, and that is that although an inventive concept may be susceptible to embodiment in more than one type of invention (machine, product, or method), when the inventor accepts a patent for one embodiment of this concept which in effect gives him a monopoly of the others, he thereby loses his right to a subsequent patent upon any other embodiments, because to grant him such right would be to extend the monopoly given by law. Probably in such case the inventive concept must be basically unitary, and the pat-

ent which is granted must disclose and teach all that is found in the subsequent patents. Possibly, also, the practice of the earlier issued patent must involve the use of the machine, device, or method of the later patents; or the machine, device, or method of the later patents must evidence no more than the use of mechanical ability in the more efficient practice of the earlier patent. But even when measured by these severe standards the later patents in the present case cannot stand. As we have already said, and as stated by the Supreme Court, the reissue patent taught all that was disclosed by the method patent in suit. The reissue could not be advantageously utilized in conformity with its teachings without also practicing the method; and the method was but the more or less obvious mechanical means for producing the ultimate product involved in the reissue. Compare Mosler Safe & Lock Co. v. Mosler, Bahmann & Co., 127 U. S. 354, 361, 8 S. Ct. 1148, 32 L. Ed. 182.

"(4) Finally, it may be said that the statute requires the patentee to make known to the public the limits of the monopoly which he claims (Rev. St. Sec. 4888, 35 U.S.C.A. Sec. 33), and where the invention is unitary in its nature the right to a patent is exhausted except as claimed in the first patent to issue. Thereafter deficiencies in the scope of the claims must be supplied by reissue. Such reissue patent would expire as of the date of expiration of the original patent upon which it is founded, and we do not think that an inventor should be permitted indirectly to obtain more in the way of an extended term of monopoly, as by keeping alive for years some fragment of his application and by division, than he could directly obtain by reissue. Compare General Motors Corp. v. Rubsam Corp., 65 F. (2d) 217 (6 C.C.A.), decided May 19, 1933."

Although the decision of this Court in the *Wirebounds* case at 282 U. S. 704 and the decision of the Court of Appeals in the later *Wirebounds* case at 65 F. (2d) 904 was brought to the attention of the Court of Appeals below in petitioners' brief, nevertheless the Court not only refused to apply the principle of those decisions in the instant case

but ignored the decisions entirely and made no reference with respect to them.

In the instant case, the Schmidtke patent No. 1,752,856, as previously pointed out, teaches everything that is disclosed in the later patent No. 1,895,586. It shows the exact basket of the later patent. It discloses the necessary machinery for making that basket and it, of course, discloses and claims the exact method of making that basket. One cannot advantageously utilize the apparatus and method of patent No. 1,752,856 without producing the product which is attempted to be claimed in patent No. 1,895,586. That product is the obvious result of the use of machinery and process.

The doctrine as applied to the later issued product patent is not new. In *McKay et al.* v. *Jackmon,* 20 Blatch. 466, Judge Wheeler, in 1882, held that after knowledge of a machine to make a shoe in a particular manner, there was no room for an invention of the manner of making a shoe, or of a shoe made in that manner, and there would be no more room for the inventor of the machine than for anyone else. The complainant had an expired patent for the machine, and later patents for the product of such machines and the process of making such products: but it was held that, after the machine had been made, the process and product did not present patentable subject matter.

The public gave a monopoly to the respondents for the full 17 year life of patent No. 1,752,856 with the express and implied understanding on the part of the inventor and respondents that at the expiration of that monopoly the public would be permitted to engage in the useful free and unrestricted use of the patented apparatus and method, that is, its use for its intended and only purpose—the manufacture of a particular type of basket. Under the decision of the Court below, the public and these petitioners do not have the right of free and unrestricted use because of the upholding by the Court of an undue extension of patent monopoly. The Court below has misapplied the decisions

of this Court and it has made a decision which if permitted to stand will act as a precedent to encourage future undue extensions of patent monopoly.

**Conclusion.**

This case involves a question of far-reaching public importance, that is, the effective extension of a patent monopoly beyond the statutory period of 17 years. The decision of the Court below is incorrect, it is contrary to law and the public interest and, therefore, it is earnestly urged that the petition be granted.

Respectfully submitted,

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HAROLD W. BRYANT,
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16

AUG 3 1951

CHARLES ELMORE CROPLE
CLER

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1951.

## No. 153

HOPE BASKET COMPANY, A CORPORATION, WALTER VERHALEN, R. A. DENNISON, AND WALTER VERHALEN, II, DOING BUSINESS AS WALTER VERHALEN COMPANY, A PARTNERSHIP,

*Petitioners,*

*vs.*

PRODUCT ADVANCEMENT CORPORATION AND ST. JOE MACHINES, INC.,

*Respondents.*

## BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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